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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/806,833

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Raymond Giannelli

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05/17/2007

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EXAMINER

NGUYEN, TAM M

ART UNIT

PAPER NUMBER

3764

MAIL DATE

DELIVERY MODE

05/17/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/806,833

Applicant(s)

GIANNELLI ET AL.

Examiner

Tam Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 and 36 is/are pending in the application.
- 4a) Of the above claim(s) 27-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 and 36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 6/20/05, 3/7/07, 4/26/07.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: Amieux Reference.

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 27-35 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Invention II, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on February 20, 2007.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 10, 18 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Gordon (6,036,622).

2. As to claims 1 and 4, Gordon discloses an apparatus comprising a pair of pivotable foot support mechanisms (16) supported on a frame (14) and a pair of foot pedals (12) mounted on the support mechanisms for movement along an arcuate path wherein the pedals have a generally planar foot sole receiving surface, the foot pedals are pivotally mounted in an arrangement on the support mechanism (note: each pedal is fixed to a lower link that is pivotally coupled to an upper link) such that the sole receiving surfaces of the foot pedals pivot or rotate less than about three degrees in the lateral direction during back and forth movement of the support mechanisms and the path of

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translation movement of a foot pedal is the same from back to front and front to back (see Fig. 2 & Col. 4, lines 1-18).

3. As to claims 10, 18 and 36, Gordon discloses an apparatus comprising a pair of left and right pedals (512) each having a foot sole receiving surface, the pedals being mounted on a frame (520/522) for movement in an arcuate path, a pair of left and right manually graspable arms (584) interconnected to a respective one of the pedals such that the left arm pivots forwardly together with forward movement of the left pedal, the left arm pivots rearwardly together with backward movement of the left pedal, the right arm pivots forwardly together with forward movement of the right pedal, the right arm pivots rearwardly together with backward movement of the right pedal and the foot pedals pivot or rotate less than about three degrees in the lateral direction during movement between backward most and forwardmost positions (see Fig. 9b & Col. 8, lines 58-60).

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Husted (5,857,940).

4. As to claims 1 and 2, Husted discloses an apparatus comprising a pair of pivotable foot support mechanisms supported on a frame (58) and a pair of foot pedals (27) mounted on the support mechanisms for movement along an arcuate path wherein the pedals have a generally planar foot sole receiving surface, the foot pedals are pivotally mounted in an arrangement on the support mechanism such that the sole receiving surfaces of the foot pedals pivot or rotate less than about three degrees in the lateral direction during back and forth movement of the support mechanisms and remain

generally coplanar with a fixed reference plane during back and forth movement of the support mechanisms (see Fig. 1).

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Stevens (5,496,235).

5. As to claims 1 and 3, Stevens discloses an apparatus comprising a pair of pivotable foot support mechanisms supported on a frame (1) and a pair of foot pedals (21) mounted on the support mechanisms for movement along an arcuate path wherein the pedals have a generally planar foot sole receiving surface, the foot pedals are pivotally mounted in an arrangement on the support mechanism such that the sole receiving surfaces of the foot pedals pivot or rotate less than about three degrees in the lateral direction during back and forth movement of the support mechanisms and the support mechanisms comprise four bar linkage mechanisms (see Fig. 1).

Claims 6, 7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Yu (5,655,998).

6. As to claims 6, 7 and 9, Yu discloses an apparatus comprising a pair of pivotable support mechanisms (30) supported on a frame (22) and a pair of foot pedals (31) mounted on the support mechanisms for movement along an arcuate path wherein the foot pedals pivot or rotate less than about three degrees in the lateral direction during back and forth movement of the support mechanisms, the foot pedals are interconnected to a pivot mechanism (70) that is adjustable to a selected degree of pivot that adjusts the arcuate path of translation movement and the translation movement is the same from back to front and front to back (see Figs. 1 & 4 and Col. 2, lines 63-67).

Claim 24 is rejected under 35 U.S.C. 102(b) as being anticipated by Nguyen (6,671,665).

7. As to claim 24, Nguyen discloses an apparatus comprising a pair of foot pedals (45a,45b) mounted on a frame (12) for movement along an arcuate path and a pair of manually graspable input arms (34a,34b) each pivotally interconnected to a respective one of the foot pedals for pivoting wherein the arms and pedals are interconnected to a control mechanism that directs one interconnected arm and pedal to travel in the back and forth direction while simultaneously directing the other interconnected arm and pedal to travel in the opposite direction (see Figs. 1-4 & Col. 2, lines 41-43). For example, when the right arm is moved forward, the left pedal is also moved forward.

Claims 10-13, 19 and 20-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Hsieh (5,605,521).

8. As to claims 10-13, 19 and 20-23, Hsieh discloses an apparatus comprising a pair of left and right foot pedals (30,32) mounted on a frame by linkages for movement along an arcuate path and a pair of left and right manually graspable input arms (34,36) each pivotally interconnected to a respective one of the left and right foot pedals for pivoting movement in a back and forth direction wherein the foot pedals are adjustable to move along a selected segment of the overall arcuate path, the selected segment is variably selectable to have a variable degree of incline, the foot pedals pivot or rotate less than about three degrees in the lateral direction during movement between backwardmost and forwardmost positions, the left arm pivots forwardly together with forward movement of the left pedal, the left arm pivots rearwardly together with

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backward movement of the left pedal, the right arm pivots forwardly together with forward movement of the right pedal, the right arm pivots rearwardly together with backward movement of the right pedal and the foot pedals are mounted on the frame via a four bar linkage mechanism (see Figs. 1 & 4 and Col. 4, lines 20-50). Note, the foot pedals are adjustable along a selected segment in the sense that they can be moved along a short arc segment or a long arc segment depending on the displacement of the user's feet. Accordingly, when a short segment is selected, the degree of incline is small whereas when a long segment is selected, the degree of incline will be relatively larger. Also the arms can be fixedly coupled to the foot pedals; thus the arms are also adjustable to move in a pivot path of selected degree of pivot.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens '235 in view of Yu '998.

9. As to claim 5, Stevens disclose an apparatus as described above (see discussion of claim 1). Stevens does not disclose that the pedals are interconnected to a pivot mechanism adjustable to a selected degree of pivot that adjusts the arcuate path of the foot pedals. Yu discloses a similar apparatus having a pivot mechanism interconnected to pedals such that the degree of pivot is adjustable to adjust the arcuate

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path of the foot pedals. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine Yu's pivot mechanism with Stevens' apparatus such that the degree of pivot can be adjusted to prevent hyperextension injuries during exercise.

Claims 8, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu '998 in view of Stevens '235.

10. As to claims 8, 25 and 26, Yu discloses an apparatus as described above (see discussion of claim 6). Yu does not disclose that the support mechanisms comprise four bar linkages. Stevens discloses a similar apparatus having support mechanisms that comprise four bar linkages. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to substitute the leg (30) of Yu's support mechanism with Stevens' support mechanism legs (2) to provide added strength to the support mechanism and provide the user with added comfort wherein the foot pedals now would rotate less relative to the support mechanism legs.

Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsieh '521 in view of Amieux (FR 498,150).

11. As to claims 14-17, Hsieh discloses an apparatus as described above (see discussion of claim 10). Hsieh does not disclose that the arms and the pedals are interconnected to a reciprocating mechanism that directs one of the left or right pedals to travel in the back or forth direction while simultaneously directing the other of the left or right pedals to substantially always travel in an opposite direction wherein the reciprocating mechanism comprises a rotating mechanism having a pair of pivot points



pivotally interconnected to the left and right pedals and arms, and the pivot points are disposed at substantially opposing 180 degree positions along a circular path of rotation. Amieux discloses an apparatus having foot pedals that move along an arcuate path and a reciprocating mechanism (m,n,o,t,s) as substantially claimed that further includes resistance components (see Fig. 1). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine Amieux's reciprocating mechanism with Hsieh's apparatus to provide a resistance element to the apparatus.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Chen '781 discloses an exerciser having pedals that move in an arcuate motion wherein the pedals are interconnected to reciprocate back and forth.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 571-272-4979. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cary O'Connor can be reached on 571-272-4715. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

May 2, 2007

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Tam M. Nguyen  
Examiner  
Art Unit 3764

  
Cary E. O'Connor  
Primary Examiner